EXHIBIT 18, Part 1 of 4

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
THIRD DIVISION

EDISON RUNYAN; DWIGHT PIPES; EARL L. PURIFOY; JOHN ROSS, As the Legal Representative of ELIZABETH ROSS; MARY WEIDMAN; DURAIN WEIDMAN; MARION HARRIS; and VAN R. NOLAN, Each Individually, and on Behalf of All Others Similarly Situated,

Plaintiffs

V. CV 2009-2066

TRANSAMERICA LIFE INSURANCE COMPANY; LIFE INVESTORS INSURANCE COMPANY OF AMERICA; MONUMENTAL LIFE INSURANCE COMPANY; and AEGON USA, INC.,

Defendants

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BE IT REMEMBERED, that on the 9th day of November, 2009, the above-referenced cause came before the Honorable Jay Moody for hearing. The proceedings were had and done as follows:

THE COURT: Good morning, everybody. We are on the record in civil case 2009-2066, Runyan, et al, v. Transamerican Life, et al. Since my court reporter is familiar with some of you but not all of you, as you approach the podium, if you could give her your name. I'm not aware of who all y'all are either, but -- and who you represent. That would benefit us greatly in giving y'all a more accurate record.

I think we have some preliminary motions to take up that logically would be ruled on prior to us going into the fairness hearing. Mr. Baker, you are approaching the podium. Are you in charge?

MR. BAKER: Not necessarily, Your Honor. But I did want to -- I am John Baker. I'm here for the defendants. And there are several motions, I believe all of which were filed within the last 10 days or so. There is a whole flurry of them. And although today has been scheduled for the fairness hearing, we think clearly these are all meritless and they're all untimely. They've all been considered by the Court at one time or another. They all ought to be denied.

If you want to hear argument on them, we're certainly willing to do it because these are attempts nonetheless to slow down this train, regardless of what Your Honor decides today, and they're meritless. But

if Your Honor wants us to brief them, we're certainly willing to do that. But we don't want them to slow down our fairness hearing presentation because that's what everybody has been working towards instead of responding on these little motions they keep filing.

THE COURT: Well, I guess I need to make sure that -- I came in this weekend and read what I thought was everything. It's all in a box. And I've got William Shepherd's motion to reconsider or, in the alternative, for a motion to opt out what I call the South Carolina objectors, which are Queen, Barnhill, Gibson, and is it Hege motion to carve out a subclass, I guess; Shepherd's motion to produce, and then I think Patrick -- how do you pronounce your last name?

MR. KNIE: It's Knie, K-n-i-e, Your Honor.

THE COURT: Knie. Okay. Give myself a phonetic note right there. I think I've entered your order for pro hac already, but I don't know that.

MR. BAKER: You did.

THE COURT: Is there anything else that --

MR. BAKER: Well, Brother Matthews has filed something called a --

THE COURT: Brother Matthews and I -- at the risk of sounding like we were exparte, he came over and summarily got most of his relief denied on Friday.

MR. BAKER: We heard about that.

MR. MATTHEWS: We had a 10-second hearing. He denied -- everybody has been denied summarily.

MR. BAKER: I understood that the Court denied it to the extent it sought to stay today. But I didn't understand if Your Honor had also denied his motion to set aside preliminary approval order, which was also part of his motion.

THE COURT: Well, I granted Mr. Matthews' motion to be substituted as counsel for Randy Coleman, denied his motion for a continuance. And that's all we dealt with on that day.

MR. BAKER: Okay. Then I think at least by title, at least, although it's not argued much in his filings, his title says his motion is also to set aside the preliminary approval order, which I know Your Honor has taken you up in a prior motion and denied. So I think --

THE COURT: For the record, that motion to set aside the preliminary order will be denied also because we're here. I mean, I'll either --

MR. BAKER: But I think that's the totality of the motions pending. And again, not all of them are ripe for resolution, but we are prepared to argue them and we think they're all without merit. And so if we

want to do that at the end of the hearing today or right now --

THE COURT: Well, let me ask, if I can find him. Mr. Turner, had you intended to argue your motion to reconsider and to opt out, or did you want me to rule on that on the pleadings?

MR. DAN TURNER: I was prepared to argue it, Your Honor. I didn't know if you would want to take it up before the fairness hearing or at the conclusion of it.

THE COURT: Well, help me out here. Had you and Mr. Shepherd filed an objection?

MR. DAN TURNER: He had not, Your Honor.

THE COURT: Okay. And so I guess that's what I was thinking is, Mr. Shepherd may have had an objection.

MR. DAN TURNER: No, sir. We're not here to speak on behalf of Mr. Shepherd with respect to the fairness hearing itself, Your Honor. Just the motion that we filed.

THE COURT: Okay. The South Carolina objectors do have, obviously, an objection. I don't know if those should have been marked as intervenors or objectors. But I think logically, that needs to be ruled on prior to the fairness hearing because if they're a subclass, they're not objecting. I don't

know if they are or not. I guess not necessarily. They could have a subclass and object, I guess. But I'm not sure.

MR. BAKER: Well --

THE COURT: I would prefer to, at a minimum, hear that motion before we have the fairness hearing. And I think whether or not Mr. Shepherd opts out or not or -- Mr. Turner, I do have to hear your motion to reconsider your motion to intervene.

MR. DAN TURNER: I have no objection to you ruling on that on the pleadings, Your Honor.

THE COURT: Okay. Well, I've already referred to that, and that's going to be denied. Your alternative motion to opt out, we can deal with after the fact. So Mr. Knie, are you carrying the water for South Carolina?

MR. KNIE: I'm all they've got right now, Your Honor. I don't play any football, so I couldn't have helped them Saturday.

THE COURT: I'm sure you'll do them proud. You have the floor.

MR. KNIE: Thank you, Your Honor.

MR. BOHRER: Your Honor, could you give us two minutes before we proceed, if you don't mind?

THE COURT: You can do it there or you can step

into my office, or wherever you feel comfortable.

(Discussion held off the record.)

MR. LEVENTHAL: Your Honor, we want to understand exactly what we're arguing because we're not aware that Mr. Knie has a motion pending.

THE COURT: Well, the motion I have pending, I guess -- and laying my hands on it may be the trick, but Deborah can do it in a hurry. But it is essentially --

MR. BOHRER: Is this it, Your Honor?

MR. LEVENTHAL: That's the only thing that we have that looks like a motion.

THE COURT: Maybe I can describe what relief they were asking, and y'all can put it to a motion because I'm having trouble laying my hands on it. But I had understood that since certain laws have been passed in certain states dealing with this issue, that Mr. Knie had requested that I designate a subclass, for lack of a better term, for each state to comply with those state laws.

MR. LEVENTHAL: I think you are referring to his objection.

THE COURT: Okay.

MR. LEVENTHAL: Which we would argue later during the objection phase.

MR. KNIE: May it please the Court, I did file two written motions, and --

THE COURT: Our docket sheet, at least the clerk downstairs -- and I can't put it as it says, "South Carolina's objections and motion to carve out South Carolina from proposed national class settlement." And whether that's -- it makes a difference, I guess, but it seems -- I took it as a separate motion aside from their objection.

MR. LEVENTHAL: I don't think we've ever seen that motion.

THE COURT: Well --

MR. KNIE: Your Honor, those were actually sent to the clerk of the circuit court of this county by Mr. Hopkins, one of my cocounsel, on October 29th. There were two. The first one was motion to carve out South Carolina. The second one, motion to extend opt-out time.

THE COURT: Yeah. And I've got it on the clerk's docket as 10-30-09. So that would have been at the courthouse 10 days ago, I guess. But -- and I read it, but I don't know what I did with it.

MR. BOHRER: Your Honor, we do have something, I think.

MR. KNIE: It actually was -- for counsel's

information, that letter contained those two motions, and then it contained the supplemental materials that we submitted.

MR. BOHRER: We have it. We just had not seen it referred to.

THE COURT: Here's the motion to carve out, if you want to look at it real quick. I'll bet you could read it in about 20 seconds.

MR. LEVENTHAL: Well, I mean, looking at this, Your Honor, this is nothing more than trying to convert an objection into a motion. If the Court wants to hear argument on it, we'll be glad to argue it.

THE COURT: All right. Can I have mine back, or do you need it to argue? Go ahead, Mr. Knie.

MR. KNIE: Thank you, Your Honor. May it please the Court, Patrick Knie from Spartanburg, South Carolina. The first motion before the Court is a motion to carve out South Carolina as a class. We're actually asking this Court for relief in the form of being totally released from this litigation. Obviously, the Court has the power, in the alternative, to create a subclass that would protect and define the rights that are unique to the citizens of South Carolina.

Very briefly, Your Honor, there are three main

issues that I would like to cover. First, I'm sure as the Court is well aware, South Carolina is -- from the plaintiff's perspective, is very fortunate to have the Ward decision, which is the rule of law in our state. The Ward decision defined -- found that "actual charges" was an ambiguous term. And therefore, the 4th Circuit Court of Appeals looked at it in favor of the plaintiffs and said that actual charges meant the actual amount billed by medical providers.

As a result of that 4th Circuit decision, the US District Court in South Carolina ultimately granted summary judgment and judgment on the pleadings. I have those documents, Your Honor, with me. And in this maze of materials that we have, sometimes they're hard to find.

But if I may, Your Honor, I would hand up the order on damages in the South Carolina case. Actually, it's the order of judgment. I apologize. The significant -- if I may, Your Honor.

THE COURT: Sure.

MR. KNIE: The significant point in that order of judgment is -- and for counsel's information, that's entry number 403 Federal District Court in South Carolina in the Ward case, is the exhibit. And what happened as a result of the fact that summary judgment

was granted, Your Honor, is that South Carolinians in that case, which is an identical case to our case, were not awarded a maximum of $15,000, but were awarded amounts like 75,000, 126-, 193,000, 167-, amazing amounts of money because these policies were very lucrative as they were first administered.

And so to force South Carolinians to be put in a category with individuals from other states that don't have the benefit of the Ward decision would be a travesty of justice for those individuals. Mr. Hege alone has $75,000 in claims pending. He's a terminal cancer patient. He may end up with $300,000 in claims. So we would first say, because of the Ward decision alone, South Carolinians should be carved out.

Secondly, the defense in this case has made a great deal, not only in South Carolina, but with respect to the whole national class in talking about a South Carolina statute which was enacted in 2008 that now defines what they believe to be the correct definition of actual charges. Well, what they have not informed the Court is that in fact, that statute has been ruled by this same judge, Judge Joe Anderson, as prospective in nature, meaning that it does not apply to any of the policyholders that are subject to this class action settlement.

Now, the travesty of all that is, that statute is in the class notice. And so when South Carolinians read the class notice and saw that there's this statute that defines actual charges in some new way and that it must apply to them, that's totally incorrect. And with the Court's permission, I would pass up that order -- I think it deals with other things, as well. But I think page 6 -- well, page 7 I've actually highlighted for you, Your Honor, where it will show as clearly prospective.

So there's a problem, Your Honor, of course, with the notice because of that. We have the Ward decision. And I'll wait a minute while the Court reads.

THE COURT: I've read it. Thank you.

MR. KNIE: But we are even more unique. We have a South Carolina insurance regulation that is in effect in our state that says you cannot reduce or eliminate benefits of a policyholder in our state without their signed agreement to that effect. So what this Court would be doing is judicially setting aside that insurance regulation and saying despite the fact that South Carolinians have to sign for them doing what they want to do to us, this Court is saying that's okay. And as far as this class settlement, that doesn't matter. And I don't -- I wouldn't think that would be

the Court's intent to do that.

Now, in addition, Your Honor, to the best of my knowledge, these gentlemen, in their effort to bring this matter before the Court, have not done any detailed analysis of South Carolina law. And if they have, I certainly have not seen it thus far presented to the Court.

Your Honor, the -- there is a US Supreme Court decision that says in a national class, that that is important. And of course, had they done that for this Court -- and they may still be planning on doing that today -- this Court would be aware of the points that I have just made.

Your Honor, one last point that I think is very important. We have a line of cases that follow a state court decision, Nichols v. State Farm, that creates a common law, a bad faith cause of action specifically against insurance companies in our state. Now, what that would allow these objectors and other class members to do in South Carolina is to bring individual actions, just not for their actual damages -- in some of these cases, actual damages, as the Court can readily see, go to 2-, 300,000. But also to obtain punitive damages.

Why would we assume that these may be punitive

damages cases? We only have to look to the Metzger decision in Oklahoma, where the Court -- where the plaintiff was granted over $10 million in punitive damages in that individual case.

So what I'm saying is, we really are unique, Your Honor. We really don't belong in this class. We have a pending federal district court class action going on in South Carolina that can certainly adequately protect these South Carolinians. There are 6,269 of them that are policyholders. I think 231 have been stricken by cancer and would have claims in this settlement. Many of those are going to be six figure claims.

And so it's the old story that sometimes in trying to make one size that fits all, it just doesn't work. And the best thing to do is to shrink the class a little bit to a size that is manageable, where all the class members are being treated the same way. Because South Carolinians would be treated disparately if they were involved -- if they were required to stay in the class. I don't want to wax on too long. I know you've got a lot to do, Your Honor. I do have another motion to make.

THE COURT: All right. Go ahead.

MR. KNIE: I filed, I believe, as a written motion asking the Court to extend time to opt out and

require further disclosure. Some of the arguments are the same, Your Honor.

The South Carolina notice -- I mean, the notice that South Carolinians received, just like everybody else, Judge, talked about this South Carolina actual charges statute. All they had to do is to add one sentence to that notice to say, "However, it only applies prospectively --" or in the future to make it clear to South Carolinians that it really does not apply to current policyholders.

But they didn't do that, and they are -- certainly were aware of the state of the law or should be aware of the state of the law, and should be aware of Judge Joe Anderson's decision. If they were required to renotice, we could solve several blunders and inadequate explanations and, frankly, a misrepresentation about the South Carolina statute.

Your Honor, there's another problem that I would like to call the Court's attention to, and there's another reason why this matter needs to be renoticed. And there was a letter -- one of several South Carolinians received letters in response to complaints why are you cutting my benefits. Here's an example of one received by one policyholder on August 15th, 2006, from a Connie Whitlock, vice president of the

defendant.

And on page 2, Your Honor, you will see that Ms. Whitlock refers to the district court decision in Ward, the first decision before it was reversed by the Supreme Court -- I mean, the Court of Appeals. And it's telling this policyholder, "This is the rule of law in South Carolina." Well, the problem, Judge, if I may, is that they never wrote and told these policyholders later that the rule of law had changed. And it would have been very simple to do that in 2009, when they sent out the class notice, some three years later, by simply saying, "By the way, the Ward decision has now been reversed in South Carolina."

Would that have been a fair notice? Absolutely. And in a national class, the law is clear. You have a duty, if you're sending out the notice, to advise various states of particular and unique laws in their state. So while that was not a misrepresentation when it was mailed, the failure to later inform the class in the class notice of what took place, Your Honor, at least as to South Carolinians, misled them. So for those reasons, we feel like a new notice needs to be sent and that it needs to have further disclosure to South Carolinians, in the event that the Court just doesn't carve us out, which is the simple solution to

this problem, Your Honor.

Your Honor, also, in the alternative, once again, it's my understanding that if the Court, for some reason, chose to deny these first two motions -- and I would hope that you would grant the first. Then I would move in the alternative -- and I believe during the course of the hearing in Arkansas, you can move verbally without the need for filing a written pleading. But I would move that you would at least allow Steve Hege and Lillian Logan, a Georgia class member that I represent, to opt out of this class.

Mr. Hege nor Ms. Logan had counsel when they decided to object rather than opt out. They're terminally. I mean, they couldn't travel here to Arkansas to defend themselves. They have secured my services since.

And the sad part with Mr. Hege, being a South Carolinian, he had to make the decision to object rather than opt out not knowing about the Ward decision, not knowing about the prospective nature of the South Carolina statute, not knowing about the South Carolina insurance regulation, or the line of cases in Nichols about bad faith because it wasn't in the notice. So in the end, what we're all about, this is a, quote, "fairness hearing," Judge. We're just here

to be fair. And I don't see how anybody in this courtroom can stand up and make a credible argument that this is fair to South Carolinians.

MR. LEVENTHAL: That, Your Honor, was one of the most frivolous motions I have ever heard in my life. Let me take them one by one. First of all, let me explain who Mr. Knie is. Mr. Knie is among the group in South Carolina that, just like everybody else in this courtroom, got the Court's notice when this fairness hearing was set. The Court sent out its notice on September 24th. Everybody knew it was November 9th. Waited till October 29th, about a week ago or so, filed an emergency motion to enjoin this fairness hearing in South Carolina and asked for an emergency hearing last Thursday, which was denied on Friday by the Court in the Belue case.

And the amazing thing about it was, it was the exact same motion that the Gooch lawyers had filed in Tennessee, which had been set aside by the 6th Circuit. So they wait about a week before this hearing is going to take place, they file the exact same motion to enjoin. They move for an emergency hearing before the South Carolina judge, which we had to scramble like crazy to address. And now they come in here with these motions. Well, let's take these motions.

First of all, the first motion. This is a motion which is entirely proper -- improper. What it is is to opt out the entire state of South Carolina. We sent the notice to the South Carolina policyholders. They don't represent the South Carolina policyholders. We have hundreds, if not thousands, of South Carolina policyholders who filed claims with the settlement administrator.

Secondly, they have their own clients who they do represent, which they already opted out. They opted out Mr. Hill, Mr. Belue, the plaintiffs in the Belue case. This letter that Mr. Knie just showed you is addressed to Mr. Joel Hill. Well, Mr. Joel Hill already opted out. This is one of the gentlemen that has a case in South Carolina.

This Court's preliminary approval order expressly says you can't opt out a group of people. Opt outs have to file their own request for exclusion. So the motion number one is improper because it violates the Court's preliminary approval order.

It's improper, number two, because they don't represent these people. In fact, with that emergency motion to enjoin this Court, they also filed an emergency motion to certify the class in South Carolina, which the Court also did not deny it, said

I'm not going to rule on this until January. So they have no certified class. They have no standing. They have no right to represent any of those South Carolina policyholders.

Next, let me talk about the Ward case. The Ward case was a decision by a panel of two judges, which was expressly designated as unpublished and not binding precedent in the 4th Circuit. The Ward case held basically that actual charges was ambiguous. The South Carolina Department of Insurance was so upset by that decision that they lobbied the legislature to pass a statute defining actual charges in South Carolina, which now exists. There is a bulletin. Does the Court have our supplemental appendix?

THE COURT: I do. Nicely bound.

MR. LEVENTHAL: Nicely bound. And in that supplemental appendix -- is it Exhibit 24?

THE COURT: Is this the one you are referring to?

MS. McCABE: Yes.

MR. LEVENTHAL: Exhibit 24 is a bulletin by the South Carolina Department of Insurance. And what this bulletin does, it explains the statute that the South Carolina department lobbied for and had passed specifically to overrule the Ward case. And if you turn to the second page of this bulletin, it explains

the statute.

The statute codifies the department's long-standing interpretation of the term "actual charges." For many years, spanning the terms of three directors of insurance, the department has consistently interpreted those terms to require insurers to paid benefits on an expense-incurred basis and not to pay benefits to insureds in amounts greater than the medical provider agreed to accept as payment in full for the services rendered. The statute is based upon the same legal and public policy considerations on which the department has continuously relied in interpreting actual charges.

The statute embodies the basic principle of insurance that insurance is a contract of indemnification. That insured must suffer an actual out-of-pocket loss to receive payment of benefits. And that actual charges insures that a few insureds do not receive windfalls in the form of benefit payments greater than sums actually paid to the health care providers. Such windfalls inevitably would cause premiums to increase exponentially for all and would restrict the availability and affordability of the supplemental disease policies, to the detriment of the citizens of this state. And that statute requires

actual charges, from the date it was effective, to be paid properly, according to the actual amounts the doctors are being paid or they're entitled to accept as payment in full.

That's what the settlement does. To come in here and argue that the settlement is somehow, you know, harmful or is so bad that we can't have it apply to South Carolina residents is ridiculous. That's why the South Carolina legislature passed a statute consistent with the settlement. And in fact, the argument can be made that many of those policyholders will be better off in the settlement because at least they'll be able to get some compensation for the past benefits. So that is the Ward case. It's been entirely overruled by statute.

The second motion was a motion to extend the time to opt out. Well, the notice went out on May 14th in this case. The Ward case was in existence on May 14th. The Ward case was in existence on June 28th, the opt-out deadline. They had no problem opting out their clients. They opted out their clients. Mr. Hill, Mr. Belue, the Little group, and several others. I believe they represented to the South Carolina judge that they had opted out 45 South Carolina policyholders. So why are they in here now trying to

opt out the entire rest of the state of South Carolina, who they don't represent and would have filed claims in the settlement? There is absolutely no basis for that whatsoever.

Lastly, two of the individuals that Mr. Knie mentioned, Stephen Hege, he filed a claim and he filed an objection. He's part of the settlement. And the last person was, I believe, Lillian Logan, who doesn't even live in South Carolina, lives in the state of Georgia, which also has a statute.

So we think both of these motions are not well taken and should be denied. This, I understand, is a collection of the 45 opt-outs which Mr. Knie has represented and has already opted out of this case, I'll submit it to the Court.

MR. KNIE: If I may respond briefly. I'm sure the Court noted that Mr. Leventhal, in saying that the South Carolina statute has effectively overruled Ward, failed to mention Judge Joseph Anderson's order finding that in fact, the statute is prospective only. So in fact, it has not overruled Ward. He knows it has not overruled Ward. And the judge was absolutely correct in saying that it is prospective only and does not apply to these class members. So that statement is incorrect, Your Honor.

Yes, we did go procedurally in court in South Carolina and asked the Court to issue an injunction. The Court said, "Mr. Knie, you're in the wrong court. If you want to carve out the South Carolina class, you need to go to Little Rock, Arkansas." And I said, "Yes, sir. And I'm going." And so that's the reason we're here, because Judge Anderson said I need to do it here. Thank you.

MR. BOHRER: Your Honor, if I may. Phillip Bohrer for the plaintiffs. I just want to make one point, Your Honor, and that is this. As we set forth in our brief, Arkansas law, in the case of General Motors v. Bryant, addresses the issue of differences in state laws when evaluating, for certification purposes, a nationwide settlement. And the law in Arkansas is is that variations in state law do not defeat certification. Arkansas courts are not required to conduct a state-by-state analysis. And the reason is is because in settlement contexts, there are no manageability presented with the differences between state laws.

The basis of the settlement is to resolve the litigation on a nationwide basis. And the South Carolina individuals who don't like the settlement have an option, and that option is to opt out. And in fact,

several have. Many have not. Many have filed claim forms. Many have decided that they want to participate. There is no defect in the notice. And the settlement is consistent with Arkansas law, Judge.

THE COURT: The Court is going to deny the motion for a subclass and deny the motion to extend the time to opt out. I believe that's all the preliminary issues we need to get out of the way before we move on to the --

MR. BAKER: I think we're ready to proceed on the fairness hearing, Your Honor.

THE COURT: All right. Let's do so.

MR. BAKER: Your Honor, today's proceeding falls under Rule 23. This Court has been charged by the Supreme Court, who creates all of our Rules for Civil Procedure, with a process that is intended to give this Court an assurance that the settlement that has been brought before it is fair, reasonable, and adequate. And that is the sole issue before this Court.

This proceeding today is not intended to be a trial on the merits of the dispute between these parties. We all know there is a dispute between the parties, and we know that there are pros and cons to the viability of the claims and the defenses. These parties believe that settlement is appropriate. Your

Honor has preliminarily approved it. And now we move to the four standards that the Arkansas Supreme Court has announced in Ballard, which are to be used to review this settlement under Rule 23 standard of fairness, reasonableness, and adequacy.

You will first hear from the plaintiffs and their arguments as to those -- satisfaction of the Rule 23 standard. You then will hear from the defendants. I suppose then you will hear from those objectors who have preserved their rights to present argument to this Court. And then finally, Your Honor, we intend to, as a last item, take up the attorney's fee portion of the proposed settlement. And Your Honor, with that, I will yield the floor to Mr. Bohrer.

MR. BOHRER: May it please the Court, Your Honor, as we told you when we were here the first time, we think the record in this case clearly establishes that your preliminary approval order was correct and that the settlement is fair, it's reasonable, it's the result of an arm's length negotiation between well-informed counsel.

Ballard is the controlling case with respect to the criteria that Your Honor needs to consider in determining whether or not to grant final approval. I would like to address certain Ballard issues and

Mr. Leventhal, I think, will also address certain Ballard issues. The first, Your Honor, is whether or not the class representatives were adequate. There have been some issues raised in some of these objections with respect to adequacy.

Arkansas law states that to be an adequate class rep requires a very minimal bar. It's easy to cross and it's easy to be adequate. The use of the word "adequate" is intentional because perfection is not required. Adequacy is required.

Arkansas law requires, for a class rep to be adequate, only a willingness to take time to meet with counsel, to stay informed about the case. You don't need to remember all the details of the case. You need to have a basic familiarity about the case. And you need to do your job as a class rep. We have submitted affidavits from each of the class representatives that we submit, Your Honor, establish that all of the class representatives are adequate under Arkansas law.

Arkansas law further states that if a class member -- a putative class member feels that a class representative is not adequate, the option is to opt out. Several people in this case chose to opt out. But that is the remedy.

With respect to each class representative, Your

Honor, each was either himself or herself a policyholder or is a legal representative or surviving spouse of a policyholder. Some are currently in claim status. Each of the class reps have in the past been in claims status. Many are still paying premiums. All of them had past claims.

Although the class reps easily meet the adequacy requirement -- and I know that there have been some issues raised with respect to Mr. Pipes and Purifoy based on the district court's ruling in the Pipes case that they were not adequate. A couple of points with respect to the Pipes ruling, Judge. Number one, it's not a final determination. At the time this case was settled before Your Honor, there is still pending, and there was at that time pending, a motion for reconsideration of Judge Wright's ruling. That motion has not yet been decided. Thus, the Pipes ruling is not final and it's not binding.

Second, we respectfully submit, Judge, that Judge Wright was just wrong. She applied the wrong standard. And the federal standard is more stringent than Arkansas' state standard. First, she was wrong with respect to Pipes not being a class member. Under the terms of the policy, the benefits owed to the deceased spouse clearly accrue to the surviving spouse. So

Pipes is a class member. Secondly, Purifoy certainly meets the Arkansas requirements with respect to the level of knowledge necessary.

Under any circumstance, Judge, even if Pipes and Purifoy were not adequate class representatives, we still have five other class representatives whose affidavits clearly establish that they are adequate under Arkansas law. So with respect to that component, Judge, we respectfully submit that the class representatives are adequate under Arkansas law.

Next, Your Honor, with respect to whether class counsel is adequate, each of the three proposed class counsel in this case have submitted affidavits with respect to the work they've done in this case and their CVs that outline the nature and extent of their litigation and experience. Not only with this type of litigation against Life Investors and other insurance carriers with respect to actual charge cases, but with respect to the both complex and class litigation nationwide.

Briefly, Your Honor, class counsel in this case have had extensive experience in both arenas, especially with respect to the actual charges litigation in various states around the country. The CVs, Your Honor, establish that -- and the affidavits

establish that class counsel is adequate under Arkansas law.

Now, addressing a couple of the Ballard factors, again, I will be the first to admit, Judge -- and I admit today, that on an individual basis, an individual plaintiff may very well be able to go to trial and get a judgment that contains punitive damages that may be far in excess of what he or she will receive under the terms of this settlement. There is no doubt that on an individual basis, that may occur. There is also no doubt that on an individual basis, plaintiffs may go to trial and get zero.

Thus, Judge, this case presents classic litigation risk analysis and justifies some concessions on both sides with respect to litigation risk factors. Fortunately, Judge, the law does not require Your Honor to consider what judgment value would be in this case. It requires you to consider whether or not the settlement is fair and reasonable and whether it was arrived at by an arm's length transaction.

So with respect to Ballard factor number one, the strength of the case for the plaintiffs on the merits balanced against the amount offered in settlement, there are some things to consider. Litigation risk factor number one, Judge, and perhaps most importantly,

is whether or not a class action could be certified either on a state-by-state basis or on a nationwide basis. And what's interesting about that, Your Honor, is that what we learned in the settlement process is, there are about 5800 potential past claimants. Folks who had claims for cancer and were paid benefits.

But across the landscape, at the time the case was settled, there were only about 19 lawsuits pending in various forms, individual or class actions. It means that of the universe of potential plaintiffs, not many people had asserted their rights. The inference may be that they were quite happy with the way the adjusting practices took place.

The litigation landscape and decisions with respect to class certification are very telling. As this Court knows, and everyone here knows, we attempted to certify the Pipes case and we did not win. I believe Metzger was certified by the district court and reversed on appeal. There were three courts that have denied certification. In the Ward court, as I understand it, certified a statewide claim, but it's on appeal.

And the reason that's important is this, Judge. Because if you can't certify a case, then all of the putative class members ultimately recover nothing

because there is no vehicle by which the putative class members can progress and assert their claims. And given the virtual nonexistence of litigation by the past claimants, the class vehicle obviously is an important way, and perhaps the only mechanism by which putative class members can be compensated.

So as class counsel and as a plaintiff lawyer who does complex litigation, I have to decide and my co-class counsel have to decide, what is the litigation risk factor of an adverse ruling on class certification. Well, here it's significant because if a class is not certified, then there are thousands of individuals who will never be compensated. The statute of limitation runs. They don't assert their claims. And their rights are forever lost.

And the only way in which this can be looked at objectively and empirically is to look at the litigation landscape. And the only conclusion that can be drawn is that it is a significant litigation risk. And it justifies concessions off of the nirvana number of a judgment value because these guys over here won't pay it because they know that in a litigation risk dynamic, they may win on class cert. And if so, they have very little exposure. That is one factor that mitigates in favor of the settlement. Because without

the certification, many, many people basically will not have any recovery.

The next litigation risk discount, Your Honor, is, what will the plaintiffs get on the merits. Again, I am conceding for everyone here that individual plaintiffs may get more. They may get less. Metzger is an example is someone who got more. But the Metzger facts don't necessarily exist in this case.

Interestingly, in Metzger, the plaintiff's counsel in that case smartly brought in an insurance executive in an orange jumpsuit and handcuffs and asked whether or not he had received a bribe from the defendant in that case. And of course, he took the Fifth Amendment, and obviously the jury wasn't happy. So a big punitive damage award was entered, but it's an aberration, Judge. And I will tell you that I don't think those facts exist in this case. If you look at the litigation landscape and litigation history with respect to actual charges against Life Investors and others, it's a mixed bag again.

With all due respect to my fellow attorneys from South Carolina, I'm not sure where that decision goes on the merits in Ward. I suspect that if it's litigated, it's going to get appealed and the outcome is uncertain. It's uncertain across the universe,

Judge, because some cases have ruled that actual charges means the amount the physician or health care provider accepts as payment in full. Others say it's ambiguous.

The problem with the finding that it's ambiguous, which is what happened in the Guidry case down in Louisiana, is that it doesn't necessarily, in all situations, default to a plaintiff victory. In fact, in Guidry, what happened was was that the Court said, "Look, it's -- the two interpretations are co-equal. I'm remanding to the state court -- I mean, to the district court to determine how it's going to be interpreted." And it creates an interesting class certification issue.

The issue is, Judge, that if the term is ambiguous and if a district court, in deciding the meaning of actual charges, is going to consider parole evidence or testimony on the intent of the parties, we're back to you can't certify. And you can't certify because you have to then take evidence of what the transaction and history was between the sales person who sold the policy and the buyer. And it's an individualized inquiry that results in predominant individual issues and not predominant common issues. You can't have mini trials on what this means in a